

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5002 HRES SB 94 - SB 108

57

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB 94
Publish Date: _____

Revision Date: 3/10/87
Title: Mineral Policy

Agency Affected: Natural Resources
BRU: Minerals Management

Sponsor: Senator Coghill, et. al.
Requestor: Senate Resources

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Activities required by this bill will be performed by existing staff.

Prepared by: Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: _____

Approved by Commissioner: Lennie Boston Date: 3/10/87
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

DRAFT

For an Act entitled: "An Act adopting a mineral policy for the state."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.99 is amended by adding a new section to read:

Sec. 44.99.110. DECLARATION OF STATE MINERAL POLICY; CIVIL

ACTION. (a) The legislature, acting under art. VIII, sec. 1 of the Constitution of the State of Alaska, in an effort to further the economic development of the state; to maintain a sound economy and stable employment; and to encourage responsible economic development within the state for the benefit of present and future generations through the purposeful development of the abundant mineral resources within the state, including metals, industrial minerals, and coal, declares as the mineral policy of the state that

(1) state land be available and managed for mineral exploration and development through multiple use.

[(1) STATE LAND BE AVAILABLE FOR MINERAL EXPLORATION AND DEVELOPMENT THROUGH MULTIPLE USE PRACTICES THAT MAY NOT SUBORDINATE MINERAL RESOURCE DEVELOPMENT;]

2) mineral development will be encouraged through reasonable and consistent, non-duplicative regulations and administrative stipulations.

[(2) MINERAL DEVELOPMENT NOT BE ENCUMBERED BY EXCESSIVE, UNATTAINABLE, OR UNECONOMICAL LEGISLATIVE OR ADMINISTRATIVE STIPULATIONS;]

(3) The development of a statewide transportation infrastructure system be encouraged for the purpose of facilitating mineral development and the entry into the marketplace of mineral products; and

[(3) A COMPREHENSIVE TRANSPORTATION INFRASTRUCTURE BE DEVELOPED IN THE STATE TO FACILITATE THE ENTRY INTO THE MARKET PLACE OF MINERAL PRODUCTS; AND]

(4) the general and public functions of the state that promote mineral development, inform and educate the public, and advance the knowledge and technology of the mineral industry receive the support of the state.

(b) Within one (1) year of the effective date of this Act, all State departments, boards, and commissions shall review their statutory authority, administrative regulations, and procedures applicable to mineral exploration and development to determine whether there are any deficiencies or inconsistencies that must be addressed in order to comply with this Act.

[(b) A PERSON MAY FILE A CIVIL ACTION AGAINST A PERSON OR ENTITY, INCLUDING THE STATE, AN INSTRUMENTALITY OF

THE STATE, OR AN OFFICER OR EMPLOYEE OF THE STATE
ACTING IN AN OFFICIAL CAPACITY, FOR FAILING TO CARRY
OUT A POLICY ESTABLISHED UNDER THIS SECTION. A COURT,
IN ISSUING A FINAL ORDER IN AN ACTION BROUGHT UNDER
THIS SUBSECTION, MAY AWARD COSTS AND EXPERT WITNESS AND
ATTORNEY FEES TO THE PREVAILING PARTY.]

Original sponsors: Coghill, Bennett,
Faiks, et al.

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 94 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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13 ture within the first 10 days of the Second Session of the Fifteenth Alaska
14 State Legislature.

15 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
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5-0464X
Bradley
3/10/87

Original sponsors: Coghill, Bennett,
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Barb Johnson
Feb. 26, 1987
Steve Johnson
P.O. 670874
Chugiak, AK 99567
688-9782 (res.)

Representative Sam Cotten,

I'd appreciate it if you read my comments to Division of Parks and Outdoor Recreation regarding the closure of Peters Creek to snow vehicles. I believe the motorized users have stretched the truth to you. Please read the survey from the Chugiak Star 2/12/87 on wintertime activities in the Eagle River-Chugiak area. Skiers(non motorized users) headed the wintertime activities at 43%. Snow vehicle users which included 11 other activities were only 19%. Total non-motorized activities in the Eagle River-Chugiak area are +81% compared to -19% for motorized activities during the winter. I would think any closure to motorized use in Chugach State Park affecting Eagle River and Chugiak has overwhelming support.

I'd also like to point out that Eagle River and Ekultna Valley are open to snow vehicles. This closure would narrow the gap to balance the north end of Chugach State Park between motorized and non motorized users.

I feel if you support the opening of snow vehicles in Peters Creek you are ignoring a state law currently being violated (snow vehicles on a public road), and the violation of a state park regulation (snow vehicles in a closed area-wilderness zone).

I'd appreciate your comments on the Peters Creek snow vehicle closure or any other issues in the future regarding Peters Creek.

Thank you,

Steve Johnson

February 20, 1987
Steve Johnson
P.O. Box 670874
Chugiak, AK 99567

Division of Parks and Outdoor Recreation,

This letter is to comment on one of the proposed regulation changes affecting Chugach State Park (CSP). Specifically, my comments will be regarding 11 AAC 20.040.

I strongly recommend this regulation change be adopted. Some of my reasons were brought out at the Jan. 28th Anch. public hearing although, I'd like to again address those comments and bring up additional comments.

Again, I support the CSP trail plan and the CSP Citizens Advisory Board which recommends the closure of snow vehicles in the Peters Creek drainages. The three reasons for the closure ~~are~~ listed on page 68 Appendix I of the CSP trail plan are valid reasons.

As a resident in Peters Gate Subdivision and landowner on Malcom Dr. I have a good idea on the number of snow vehicles using the Peters Creek drainage. From my observations the use is predominately by local residents. Rarely, snow vehicle operators use trailers and park at the end of Malcom Dr.. The reason is there isn't an adequate parking area and loading ramp provided by CSP like all the other areas open to snow vehicles in the park. Ekultna, Upper Huffman and Bird Valley all have a parking area and a loading ramp or loading area. During the weekend we are constantly hearing the loud noise of local resident snow machiners and ATV users racing up Malcom Dr. which is a public road and ~~is~~ a violation under state law. Since CSP isn't providing a parking area and loading ramp for snow vehicle park users, this is currently prompting illegal use on public roads by local residents. The steep access road grades prevents many other snow vehicle park users, other than local residents, to drive to the end of Malcom Dr.. Why is Peters Creek drainage open to snow vehicles without proper facilities?

A major problem with snow vehicle users in Peters Creek is the current closure at nine mile creek. This is being ignored by snow vehicle users. One reason is the area isn't properly signed and at that point the drainage is narrow. The snow vehicle operators continue up the drainage and into the wilderness zone which prohibits motorized vehicles. ~~A~~ more logical closure for snow vehicles would be

at the trailhead (1 1/2 miles before nine mile creek). The boundary of the wilderness zone is where the drainage opens up and is the reason why snow vehicle users continue into this area. Why is CSP allowing snow vehicles this far into the drainage which is tempting the snow vehicle operators to venture into the prohibited area of motorized vehicles in the wilderness zone? The wilderness zone is in the alpine which is a high windblown area in Peters Creek and a major portion of the slopes are bare during the winter. My wife and I took a three day backcountry ski/climbing trip to the headwaters of Peters Creek, Feb. 13-15, 1987. Once we passed nine mile creek we followed up the creek crossing ice bridges when the slopes of the drainage forced us. On the south side of the creek on top of a small moraine which follows the drainage all the way into the wilderness zone, is a packed snow machine road. This is a violation of the current park regulations. Once in the wilderness zone we observed snow machine tracks on almost completely bare slopes damaging alpine vegetation. In the wilderness zone we made our own trail but, we were very dissapointed to work hard into this area and end up running into snow machine tracks everywhere! We were continually reminded of their presence by seeing their tracks while skiing past Mt. Rumble on the south side and to the headwaters of Peters Creek. Ironically we followed five wolf tracks which only stayed on the packed snow machine trail. As a rare experience to see wolf tracks in CSP we were dissapointed it was on snow machine tracks deep into the wilderness zone.

I'd like to finish by pointing out my major reasons why the drainage should be closed and I applaud CSP for proposing this regulation change to close snow vehicles in the Peters Creek drainages. The steep access road grades, inadequate parking, no loading ramp for vehicles, failure to keep local residents within the current closeure, motorized vehicles violating park regulations in the wilderness zone, zero enforcement by CSP staff and the recommendation by the CSP Citizens Advisory Board and the CSP trail plan is ample support for the Division of Parks and Outdoor Recreation to close snow vehicles in the Peters Creek drainages.

Thankyou for the opportunity to comment on this regulation change,

A handwritten signature in cursive script that reads "Steve L. Johnson". The signature is written in dark ink and is positioned below the typed text.

Survey shows support for tourism

CHUGIAK STAR 2/12/87

By ED BENNETT
Of The Star Staff

While area residents strongly support the development of a local tourism industry, only about one-third of them take their out-of-town guests to visit existing attractions in Chugiak - Eagle River.

That's one of the more striking results of a survey recently completed by the Chugiak - Eagle River Chamber of Commerce Tourism Committee.

Last fall, the committee distributed a questionnaire about tourism to numerous Chugiak - Eagle River residents, and to some businesses. The committee eventually got back 204 of the questionnaires, and chairman Mark Eidem finished tabulating the results this week.

The first question asked if residents supported tourism development in Chugiak - Eagle River. The answer, in no uncertain terms, was "yes." A total of 87 percent of those responding said so; 11 percent said "no;" and 2 percent were undecided.

People were then asked what their main concern would be if tourism were developed in Chugiak - Eagle River. Forty-five percent said they had no concerns at all; of the rest, most (28 percent of the total) were worried that such development might result in increased traffic congestion and litter. Eidem said other concerns mentioned — none accounting for more than 8 percent of the responses — included tax increases, overcommercialization, losing the small-town atmosphere, haphazard growth, and damage to the environment.

The questionnaire then asked

people what their favorite two summer and winter activities are in Chugiak - Eagle River. In the summertime, camping and hiking led the list with 38 percent; fishing was a distant second, with 15 percent; that was followed by picnicking and swimming, 10 percent; and 11 other activities, totalling 26 percent, that included boating, softball, and three-wheeling.

As for the wintertime, skiing was the favorite. Eidem said many people didn't specify what kind of skiing when they answered, but that those who did mentioned cross-country skiing most of the time. Skiing led with 43 percent, followed by skating with 25 percent (split between local lakes, school rinks, and the Fire Lake Recreation Center); then came sledding, 13 percent, and 11 others totalling 19 percent, including hockey, snowmachining, hiking, dog mushing, and bowling.

One of the more revealing sets of answers came in connection with this question: "Where do you take out-of-town guests?" The answer was 36 percent Chugiak - Eagle River, 64 percent elsewhere. The most popular local destination mentioned was the Eagle River Visitor Center, 19 percent of the total; that was followed by Eklutna (both the village and the lake), 6 percent; Skyline Drive in Eagle River, 4 percent; and less frequent mentions of Thunderbird Falls, Mirror Lake, South Fork, and canoeing on the Eagle River.

As for the other places people take their guests, Portage Glacier led the way with 21 percent. That was followed by various locations in the Kenai Peninsula, 15 percent; the Mat-Su Valley, 9 percent; Anchorage, 9 percent; and Denali National Park, 8 percent. Other low-response destinations included Valdez, Whittier, and Fairbanks.

Eidem pointed out that the survey showed the Eagle River Visitor Center to be nearly as popular as Portage Glacier. "That should be encouraging to the state parks people," he said. He was assumed that people who listed Anchorage meant they took guests there after they arrived, since everyone who flies to Alaska must pass through Anchorage to get to Chugiak - Eagle River.

The final question asked

people what kinds of winter and summer tourist facilities they would like to see developed in Chugiak - Eagle River. Eidem said there were almost as many answers as there were surveys. "There was nothing conclusive," he said, adding that the only suggestion that stood out even slightly was the need for more developed recreational vehicle camping sites.

Eidem said the survey was conducted for several reasons, including the obvious one of finding out what people's attitudes are. But the committee is also hoping to garner a state grant for tourism development — and one of the requirements of the grant is to conduct an inventory of existing attractions, and to show community support for tourism. Eidem said the survey helped fulfill both those requirements.

Eidem said the survey results will be given to various state agencies involved in tourism and related fields, and to the local legislative delegation. "We want to show that tourism development is important to our community," he said.

The survey isn't all that the Tourism Committee is doing. For one thing, it is in the midst of a petition drive which seeks signs on the Glenn Highway leading to the Visitor Center, and letting motorists know they can find food, lodging, gas, and a phone in Eagle River (see separate story).

Eidem said the group's next project will be a seminar for people in the Anchorage tourism industry which will acquaint them with the attractions available in Chugiak - Eagle River. Eidem said he's planning to hold the seminar in April, so it can be of benefit during the coming summer.

Zoning changes on council agenda

The Eagle River Community Council will meet on tonight (Thursday) at the new Eagle River Library.

The meeting will begin at 7 p.m. and topics to be discussed include reports by the Road Board, the Recreation Board, tariff filings, Title 21 amendments/zoning and Liquor license renewals.

will report on s

Jewel Jones, head of the municipal department of health and human services, will be the main speaker at the next meeting of the Chugiak Community Council, set for Thursday, Feb. 19 at 7.30 p.m. at Chugiak Children's Services, mile 19 Old Glenn Highway.

Jones will report on an independent review of the city's testing program at Northwoods Subdivision, where contaminated groundwater has been found. Residents of the subdivision challenged the accuracy of those tests, and the council asked that the program be checked by someone who is not a part of city government.

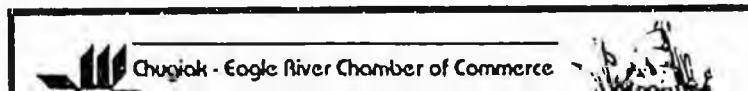
The city complied with the request, and hired experts to do the work, including consulting engineer John Lambe and hydrogeologist Mark Utting; both men will attend the Feb. 19 meeting. Also on hand will be municipal health officials Gus Andrus and Keith Bandt; Bandt will discuss the city's areawide groundwater monitoring program.

Also on the Feb. 19 agenda will be a review of seven Chugiak-area liquor licenses which are coming up for renewal. They include the Shopper's Cache, American Legion Post 33, Tips 2, Peters Creek Liquors, Peters Creek Enter-

Senators laud principal, PTA for ice actions

Birchwood Elementary School principal Frank Randazzo and the school's PTA have been recommended by Senators Rick Halford and Tim Kelly to receive a letter from the Alaska State Legislature honoring them for their maintenance of the school's ice rink despite budget cuts.

The proposed resolution reads: "The members of the Fifteenth Alaska Legislature congratulate Mr. Frank Randazzo, Principal of the Birchwood Elementary School, and the Birchwood PTA for their courage and their care and concern for the children of Birchwood, Alaska."



...take your
proceeds from
your retirement
or profit sharing
plan tax.

If you have a profit sharing or 401(k) plan, you work and it is discontinued (change of jobs, disability, etc.), you can place your funds into an Individual Retirement Account (IRA) tax-free!

There is no dollar limit on the amount you can roll over into your account. However, you must do so within 60 days of the plan termination.

THE "ROLLOVER" PROGRAM IS AN IMPORTANT TAX ADVANTAGE

1. No current tax.



From the desk of:
Mike Szymanski
Alaska State Senator

Sam & Ade

I'm passing this info.
on to you guys in hope
maybe -- you will give
it a good hard look -

I tried to improve the
bill on the floor, but
think it still needs some
work.

Mike S.

file SB 94

Original sponsors: Coghill, Bennett,
Faiks, et al.

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A M E N D M E N T # 1

Offered in the SENATE

By Szymanski
Coghlan

TO: CSSB 94 (Resources)

Page 2, line 3:

Delete "six months"

Insert "~~one year~~ **TEN months**"

Page 2, line 13:

Delete "10 days"

Insert "~~30~~ **60** days"

Dept Not Res
Facts Base
A.B.C.
1 year

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX O, JUNEAU, ALASKA 99811-1800

Telephone: (907)

Address:

(907) 465-2600

March 17, 1987


The Honorable Mike Szymanski
Alaska State Senate
P.O. Box V
Juneau, AK 99811-3100

Dear Senator Szymanski:

Attached are copies of Commissioner Brady's letter to Senator Eliason and her letter to Senator Coghill expressing the administration's views on SB 94. Basically we have taken the position that to properly conduct the review called for in Section 2 of the bill will require a year's time. A shorter period will result in a less complete review unless additional resources are expended. The administration believes that providing adequate time to conduct the review using existing resources is an acceptable alternative to requesting additional resources.

I appreciate your interest in this matter.

Sincerely,


Dennis D. Kelso
Commissioner

Enclosures

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

March 10, 1987

The Honorable Jack Coghill
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Coghill:

Subject: SB 94, relating to mineral policy.

Background: After the first hearing on the bill, representatives from the resource departments and the Department of Commerce and Economic Development met among themselves and with the Attorney General's office and various members of the minerals industry in order to fashion a bill which addressed the Administration's concerns, yet retains the essential intent, language and accountability of the original version.

Position: The Administration recognizes the need for and strongly supports the implementation of a Mineral Policy Act. In the original bill submitted to the Resources Committee, the Administration identified several technical concerns, as identified in the Attorney General's opinion, dated February 12, 1987, and as testified to by Tom Koester.

With respect to Section 1, paragraph (1) of the proposed substitute, the Administration believes that this paragraph reiterates and reinforces the state's commitment to make state land available for mineral exploration and development, within the parameters set out in the Alaska Constitution.

Paragraph (2) of Section 1 of the proposed substitute recognizes the need for a streamlined, consistent, reasonable and non-duplicative permit process which will be designed to encourage, not hinder, investment in mineral development.

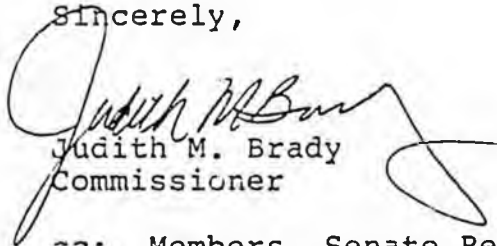
Paragraph (3) of Section 1 of the proposed substitute acknowledges that a transportation infrastructure which is comprehensive in nature is a vital component in a policy which supports and encourages mineral exploration and development.

Paragraph (4) of Section 1 is identical to the original bill.

Finally, Section (b) of the proposed bill provides a framework for the Administration to review its regulations and internal administrative policies in order to determine their consistency with the act, and to address any inconsistencies. It is intended that affected agencies will prepare reports for submission to the Governor and Legislature within one (1) year of the effective date of the act.

Recommendation: Therefore, while the Administration does not support the version of SB 94 as originally submitted to the Resources Committee, it respectfully proposes and requests the committee to consider the attached draft as a substitute for the original version. The Administration fully supports this draft and believes that it will provide Alaska with a strong and meaningful mineral policy and set a positive tone for mineral exploration and development.

Sincerely,



Judith M. Brady
Commissioner

cc: Members, Senate Resources Committee
Bill Sponsors
George Sullivan, Governor's Office
Rod Swope, Governor's Office
Commissioner Collinsworth
Commissioner Kelso
Commissioner Smith

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[(3) A COMPREHENSIVE TRANSPORTATION INFRASTRUCTURE BE DEVELOPED IN THE STATE TO FACILITATE THE ENTRY INTO THE MARKET PLACE OF MINERAL PRODUCTS; AND]

(4) the general and public functions of the state that promote mineral development, inform and educate the public, and advance the knowledge and technology of the mineral industry receive the support of the state.

(b) Within one (1) year of the effective date of this Act, all State departments, boards, and commissions shall review their statutory authority, administrative regulations, and procedures applicable to mineral exploration and development to determine whether there are any deficiencies or inconsistencies that must be addressed in order to comply with this Act.

[(b) A PERSON MAY FILE A CIVIL ACTION AGAINST A PERSON OR ENTITY, INCLUDING THE STATE, AN INSTRUMENTALITY OF

THE STATE, OR AN OFFICER OR EMPLOYEE OF THE STATE
ACTING IN AN OFFICIAL CAPACITY, FOR FAILING TO CARRY
OUT A POLICY ESTABLISHED UNDER THIS SECTION. A COURT,
IN ISSUING A FINAL ORDER IN AN ACTION BROUGHT UNDER
THIS SUBSECTION, MAY AWARD COSTS AND EXPERT WITNESS AND
ATTORNEY FEES TO THE PREVAILING PARTY.]

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 94
Publish Date : _____

REQUEST: _____

Revision Date: 3/10/87

Title : Mineral Policy

Agency Affected: Natural Resources

BRU: Minerals Management

Sponsor: Senator Cochill, et. al.

Requestor: Senate Resources

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Activities required by this bill will be performed by existing staff.

Prepared by : Larry Ostrovsky Phone : 465-2400

Division : Commissioner's Office Date : _____

Approved by Commissioner: Jennie Boston Date : 3/10/87

Agency : Natural Resources

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 485-2400

March 10, 1987

TO: Norman Cohan
From: Larry Ostrauska
3:10 PM
3:50 PM

The Honorable Jack Coghill
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Coghill:

Subject: SB 94, relating to mineral policy.

Background: After the first hearing on the bill, representatives from the resource departments and the Department of Commerce and Economic Development met among themselves and with the Attorney General's office and various members of the minerals industry in order to fashion a bill which addressed the Administration's concerns, yet retains the essential intent, language and accountability of the original version.

Position: The Administration recognizes the need for and strongly supports the implementation of a Mineral Policy Act. In the original bill submitted to the Resources Committee, the Administration identified several technical concerns, as identified in the Attorney General's opinion, dated February 12, 1987, and as testified to by Tom Koester.

With respect to Section 1, paragraph (1) of the proposed substitute, the Administration believes that this paragraph reiterates and reinforces the state's commitment to make state land available for mineral exploration and development, within the parameters set out in the Alaska Constitution.

Paragraph (2) of Section 1 of the proposed substitute recognizes the need for a streamlined, consistent, reasonable and non-duplicative permit process which will be designed to encourage, not hinder, investment in mineral development.

Paragraph (3) of Section 1 of the proposed substitute acknowledges that a transportation infrastructure which is comprehensive in nature is a vital component in a policy which supports and encourages mineral exploration and development.

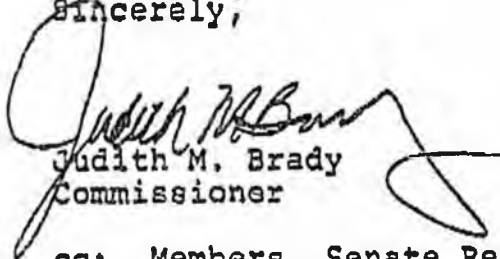
March 10, 1987

Paragraph (4) of Section 1 is identical to the original bill.

Finally, Section (b) of the proposed bill provides a framework for the Administration to review its regulations and internal administrative policies in order to determine their consistency with the act, and to address any inconsistencies. It is intended that affected agencies will prepare reports for submission to the Governor and Legislature within one (1) year of the effective date of the act.

Recommendation: Therefore, while the Administration does not support the version of SB 94 as originally submitted to the Resources Committee, it respectfully proposes and requests the committee to consider the attached draft as a substitute for the original version. The Administration fully supports this draft and believes that it will provide Alaska with a strong and meaningful mineral policy and set a positive tone for mineral exploration and development.

Sincerely;



Judith M. Brady
Commissioner

cc: Members, Senate Resources Committee
Bill Sponsors
George Sullivan, Governor's Office
Rod Swope, Governor's Office
Commissioner Collinsworth
Commissioner Kelso
Commissioner Smith

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 94
Publish Date: _____

REQUEST: _____

Revision Date: 3/10/87
Title: Mineral Policy

Agency Affected: Natural Resources
BRU: Minerals Management

Sponsor: Senator Coqhill, et. al.
Requestor: Senate Resources

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Activities required by this bill will be performed by existing staff.

Prepared by: Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: _____

Approved by Commissioner: *Lennie Barton* Date: 3/10/87
Agency: Natural Resources

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

2) mineral development will be encouraged through reasonable and consistent, non-duplicative regulations and administrative stipulations.

[(2) MINERAL DEVELOPMENT NOT BE ENCUMBERED BY EXCESSIVE, UNATTAINABLE, OR UNECONOMICAL LEGISLATIVE OR ADMINISTRATIVE STIPULATIONS;]

(3) The development of a statewide transportation infrastructure system be encouraged for the purpose of facilitating mineral development and the entry into the marketplace of mineral products; and

[(3) A COMPREHENSIVE TRANSPORTATION INFRASTRUCTURE BE DEVELOPED IN THE STATE TO FACILITATE THE ENTRY INTO THE MARKET PLACE OF MINERAL PRODUCTS; AND]

(4) the general and public functions of the state that promote mineral development, inform and educate the public, and advance the knowledge and technology of the mineral industry receive the support of the state.

(b) Within one (1) year of the effective date of this Act, all State departments, boards, and commissions shall review their statutory authority, administrative regulations, and procedures applicable to mineral exploration and development to determine whether there are any deficiencies or inconsistencies that must be addressed in order to comply with this Act.

[(b) A PERSON MAY FILE A CIVIL ACTION AGAINST A PERSON OR ENTITY, INCLUDING THE STATE, AN INSTRUMENTALITY OF

DRAFT

For an Act entitled: "An Act adopting a mineral policy for the state."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.99 is amended by adding a new section to read:

Sec. 44.99.110. DECLARATION OF STATE MINERAL
POLICY; CIVIL

ACTION. (a) The legislature, acting under art. VIII, sec. 1 of the Constitution of the State of Alaska, in an effort to further the economic development of the state; to maintain a sound economy and stable employment; and to encourage responsible economic development within the state for the benefit of present and future generations through the purposeful development of the abundant mineral resources within the state, including metals, industrial minerals, and coal, declares as the mineral policy of the state that

(1) state land be available and managed for mineral exploration and development through multiple use.

[(1) STATE LAND BE AVAILABLE FOR MINERAL EXPLORATION AND DEVELOPMENT THROUGH MULTIPLE USE PRACTICES THAT MAY NOT SUBORDINATE MINERAL RESOURCE DEVELOPMENT;]

THE STATE, OR AN OFFICER OR EMPLOYEE OF THE STATE
ACTING IN AN OFFICIAL CAPACITY, FOR FAILING TO CARRY
OUT A POLICY ESTABLISHED UNDER THIS SECTION. A COURT,
IN ISSUING A FINAL ORDER IN AN ACTION BROUGHT UNDER
THIS SUBSECTION, MAY AWARD COSTS AND EXPERT WITNESS AND
ATTORNEY FEES TO THE PREVAILING PARTY.]

DELIVER TO: <u>Randy Bayliss</u>	LOCATION <u>D.F.C.</u>
FROM: _____	LOCATION <u>NR-Turkey</u>
TELEPHONE/TELECOPIER # _____	TOTAL NUMBER OF PAGES <u>6</u>
TRANSMITTING ON/SPEED _____	DATE <u>3-11-87</u> TIME <u>3:30</u>
PHONE FOR PROBLEMS-NAME/NUMBER <u>465-2400, Lox</u>	_____
COMMENTS _____	_____

DEP.

DELIVER TO: <u>Comm. Kelso</u>	LOCATION <u>DEC</u>
FROM: <u>Comm. Brady</u>	LOCATION <u>DNK</u>
TELEPHONE/TELECOPIER # <u>1</u>	TOTAL NUMBER OF PAGES <u>7</u>
TRANSMITTING ON/SPEED _____	DATE <u>3-16</u> TIME <u>9:15A</u>
PHONE FOR PROBLEMS-NAME/NUMBER <u>465-2400, Cori</u>	
COMMENTS _____	

PER, GOVERNOR

WBY AVE.
SKA 99801-1706
485-2400

March 13, 1987

The Honorable Richard Eliason, Chairman
Senate Rules Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Subject: CSSB94, Relating to Mineral Policy

Dear Senator Eliason:

On March 10, I wrote a letter to Senator Coghill (copy enclosed), Chairman of the Senate Resources Committee concerning the Administration's position on SB94, an act relating to mineral policy. At that time, I indicated the Administration's support for the legislation, with several amendments, many of which were adopted in the committee substitute.

We believe the bill addresses several important points. The first is that mineral exploration and development should stand on the same footing as other uses of the state's resources--not that this department's authorities for the management of the state's land base are in any way diminished, but rather that mineral activities should be given equal consideration in the multiple use management of state land. Second, it is imperative that there is a sound working relationship between state agencies and industry. Third, a statewide transportation infrastructure is a vital component in a policy that supports and encourages mineral exploration and development. And finally, that public knowledge and understanding of the state's minerals industries should be enhanced if the industry is to be an active economic force within the state.

The Administration continues to support the concept of the legislation, though we continue to have some concerns with the committee substitute as finally adopted by the Resources Committee. Specifically, in regard to the language contained in Section 2 of the committee substitute, we believe that the language proposed in my March 10 letter concerning our review of the state's statutory and regulatory program is preferable to the current language contained in Section 2. The agencies are fully prepared to

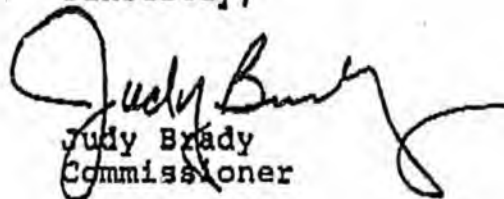
The Honorable Dick Eliason -2-

March 13, 1987

conduct this review with interested groups and individual members of the public. We would strive to complete this task as expeditiously as possible; however, we believe that the six months mandated is too short. Rather, we support a return to the language included in our March 10 letter. This change would also obviate the need for paragraph (b) of Section 2, which should be deleted.

In conclusion, we believe that CSSB 94 is an important piece of legislation which we can support with the amendments we have proposed for section 2. Thank you for your interest in this matter and we look forward to working with the Legislature as it deliberates on the bill.

Sincerely,



Judy Brady
Commissioner

Enclosure

cc: Senate Resources Committee Members
Commissioner Collinsworth, ADF&G
Commissioner Kelso, ADEC

S B

101

1. NAME: [Faint text]
 2. ADDRESS: [Faint text]
 3. PHONE: [Faint text]
 4. SUBJECT: [Faint text]
 5. DATE: [Faint text]

FEDERAL TELECONFERENCE PARTICIPANTS

NAME: [Faint text]
 ADDRESS: [Faint text]
 PHONE: [Faint text]

NAME REPRESENTING: [Faint text] ADDRESS: [Faint text] PHONE #: [Faint text]

OBSERVER: [Faint text]
 NAME REPRESENTING: [Faint text] ADDRESS: [Faint text] PHONE #: [Faint text]

TESTIFIED: _____ 1 _____
OBSERVED: _____ 0 _____
TOTAL: _____ 1 _____

START TIME: 8:30 A.M.
END TIME: 10:00 A.M.

* DELIVER TO: 100108
* ORIGINAL
* DATE: 08/03/87 TIME 12:30
* FROM: 100108
* SUBJECT: 1, REC 3/5 T/S
* PRINT DATE: 08/03/87 TIME 12:30

TO ONE (1) COPY OF FOR THE (1) (1) THIS MORNING AT 10:00
OCT 31 1987

FOR DELIVERY TO

* DELIVER TO: 100108
* ORIGINAL
* DATE: 08/03/87 TIME 10:00
* FROM: 100108
* SUBJECT: 1, REC 3/5 T/S
* PRINT DATE: 08/03/87 TIME 10:00

DATE: _____
TIME: _____
LOCATION: _____
SUBJECT: _____
OPERATOR: _____

JUSTIFY
NAME/REPRESENTING: _____ ADDRESS: _____ PHONE: _____

FALKBANKS HAD NO TYPING REPORT

DESERVE:
NAME/REPRESENTING: _____ ADDRESS: _____ PHONE: _____

FALKBANKS HAD NO OBSERVERS

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THE FOLLOWING REPORT WAS RECEIVED BY THE BUREAU OF INVESTIGATION

WAS ANCHORED PARLIAMENTARY TEST WORK

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for revenues -

1. Ed Phillips, DNR oil & gas economist - what's at stake
2. you can introduce my memo or I can speak on it
for a couple of minutes -
3. Koester to answer questions -
4. ask Katz to stay on line? D.C. angle on what to
expect from Congress

HOUSE COMMITTEE REPORT

(9)

Date referred: 2/25/87

FURTHER REFERRALS: Finance

DATE: 3/3/87

The Resources Committee has considered CSSB 101(Fin)

"An Act making a special appropriation to the Office of the Governor for representation of the State's position on the Arctic National Wildlife Refuge; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Sam R. GTS

John Keener

Raymond Hill

Mike Favane

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann No Rec

Dick Stutz No Rec

Clyff Davidson (no rec)

John ... (no rec)

Sam R. GTS
Chairman's signature

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1987

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to appropriate \$393,000 for the purpose of representing the state's position on the oil and gas development of the coastal plain of the Arctic National Wildlife Refuge (ANWR).

Background Information:

During its consideration of the Alaska National Interest Lands Conservation Act (ANILCA), the U.S. Congress recognized that there is a high potential of discovering oil and gas deposits on the coastal plain of the Arctic National Wildlife Refuge. Under provisions of the Alaska Statehood Act and other federal law, any revenue generated from oil and gas development in ANWR would be shared by the federal government with the State of Alaska. Based on the current estimates, as much as \$32 billion in revenues could accrue to the state from development of ANWR. Therefore, a decision by Congress on whether to open the refuge to oil and gas exploration could have important consequences both for the state's economic future and for the nation's energy needs.

Given the high oil and gas resource potential contained in the coastal plain of ANWR, Congress, under Section 1001 of ANILCA, directed the secretary of the interior to assess ANWR for potential oil and gas resources and make recommendations concerning future use and management of those resource as well as protection of the wildlife resources of ANWR.

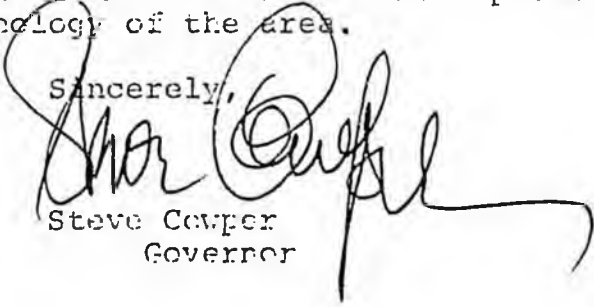
Section 1002(h) of ANILCA requires that the secretary, in consultation with the governor, conduct a continuing inventory and study of the fish and wildlife of the coastal plain of ANWR and submit a final report, known as the 1002(h) report, to Congress.

Budget Requirements:

This is an extremely important issue to the state in terms of potential employment and revenue. Similarly, since ANWR is a wildlife refuge, protection of nationally recognized fish and wildlife resources that reside in the area is also important. In order to achieve the delicate balance between developing ANWR and protecting the fish and wildlife resources, special efforts will be required at the state and national level. Such efforts will likely require additional travel by agency staff to Washington, D.C., to consult with Washington officials, assist the governor's office with additional public relations and lobbying efforts, and some additional travel within Alaska.

Discussions are presently occurring regarding the acquisition of land in ANWR by a number of Native corporations, and possibly the state, in exchange for land owned (by the Native corporations and the state) elsewhere in Alaska. In the event these land exchanges appear to be in the state's best interest, a significant amount of money will be required by the state to conduct computer processing, modeling efforts, and field work to obtain needed area-specific information regarding the geology of the area.

Sincerely,



Steve Cooper
Governor

MEMORANDUM

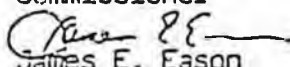
State of Alaska

RE
Do you
have?

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

TO: Judith M. Brady
Commissioner

DATE: January 12, 1987

THRU: 
James E. Eason
Director

FILE NO:

TELEPHONE NO: 561-2020

FROM: Edward Phillips
Petroleum Economist

SUBJECT: Arctic National
Wildlife Refuge (ANWR)
Land Trades and
Potential State Revenue

DNR geologists and geophysicists are in unanimous agreement that lands within the coastal plain of ANWR represent the best remaining potential for major oil and gas discoveries in Alaska. This estimated potential substantially exceeds that of remaining unleased state lands. Under current law, federal leasing of ANWR lands for oil and gas development would yield 90 percent of any bonuses, rentals and royalty income to the state. In addition, the state would receive severance, corporate, property and conservation taxes from development of ANWR leases. However, the royalty share alone could constitute upwards of 70 percent of total state revenue from potential ANWR development.

Both past and proposed ANWR land trades with native corporations reduce the revenue potential to the state by eliminating the state's share of potential federal bonuses, rentals and royalties, but not state taxes. Although the state's overall severance tax revenues would increase from development of ANWR regardless of whether or not the royalty share is reduced by exchanges, this gain is inconsequential by comparison to the state's potential royalty loss from additional federal exchanges with third parties.

Given ANWR's oil and gas potential, these losses could be substantial. The attached table reflects the staff estimates of the relative state revenue impacts of ANWR development assuming no additional exchanges and no legislative reduction in the state's 90 percent share of revenues from leasing in ANWR. (The revenue projections contained in Table 1 are derived from the geological, geophysical and economic information contained in the Draft ANWR Coastal Plain Resource Assessment (1002 Report)). The draft report data and assumptions were used by the federal government to compute the Net National Economic Benefits (NNEB) from leasing ANWR and to provide the justification for the policy recommendations contained within the report.

Specific assumptions underlying the attached revenue projections are not crucial to the basic issue, which is one of relative shares, or how the potential pie is sliced rather than absolute amount(s) involved. (No revenue projection or forecast that has the year 2000 as a base year can be treated as a likely outcome. It is more properly viewed as "one possible outcome." The use of federal revenue numbers just assures us that we are all speaking the same language.

Judith M. Brady, Commissioner
January 12, 1987
Page 2

The assumptions underlying the estimates of potential land trade-related revenue gains and losses to the state have geological, geophysical and economic components. ~~X~~ The 1002 Report indicates that if oil is discovered, the average recoverable reserves are estimated at 3.2 billion barrels. This quantity was used for the NNEB estimate derived by ELM for the draft 1002 report, and provides the "assumed" reserve base or recoverable reserves for this discussion. ~~X~~ In our analysis, production would commence (from two fields) in 2000 at a 1984 dollar price of \$33.00 per barrel, and escalate at one percent per year in real terms (production from one of the fields could be delayed for a year or two without substantially affecting the results). ~~X~~ All estimates are in 1984 dollars, hence they are net of inflation, but they are not discounted to reflect the time value (time preference) of funds to the state.

The estimates are for the years 2000 through 2010. Production cannot realistically be expected much before that time, and the Department of Revenue currently does not provide estimates of Prudhoe Bay revenues embodying the federal price assumptions for periods beyond 2010.

As Table I illustrates, potential ANWR revenues to the state (even given current ASRC/KIC inholdings) could be substantial, exceeding those of Prudhoe Bay by the year 2003. By the year 2010, ANWR's revenue potential is almost double that of Prudhoe Bay using the federal price assumptions. This would be true of almost any set of prices exceeding the development threshold for ANWR. Based upon the assumptions we have analyzed, any further transfers of prospective ANWR lands from federal jurisdiction reduces the state's per-barrel revenue potential by about 70 percent as a result of loss to the state of potential royalties, bonuses and rentals. As can be seen from Table 1, the potential royalty revenue at stake exceeds six billion dollars.

~~X~~ We believe a significant transfer of revenue potential has already occurred by virtue of ASRC's receipt of subsurface title to the two inholdings near Kaktovik. The Oil and Gas Section of CMGGS has estimated that up to 25% of ANWR's oil and gas reserve potential may be contained in lands already received by ASRC. Thus, this land trade could cost the state as much as \$1.6 billion (1984 \$) in lost royalty revenues if the assumptions used in the draft 1002 report and in this analysis are assumed. The volume of oil and gas discovered and its relative locations will ultimately determine the extent of the revenue "loss" associated with the previous ASRC/KIC land trades and any future land trades.

Attachment

0274P

TABLE I

ESTIMATED POTENTIAL INCOME 2000 TO 2010*
(10⁶ 1984\$)

Year	Prudhoe Bay			ANWR (with current ASRC inholding)			ANWR Revenue as % of P.B. Revenue
	Royalty	Severance	Total	Royalty	Severance	Total	
2000	1056	670	1726	155	0 [?]	155	9
2001	923	573	1496	528	234	762	51
2002	914	488	1302	767	412	1179	85
2003	711	419	1130	779	418	1197	106
2004	625	362	987	790	425	1215	123
2005	534	313	847	711	431	1142	135
2006	430	266	696	629	341	970	139
2007	359	223	582	560	266	826	142
2008	294	179	473	506	206	712	151
2009	235	138	373	448	148	596	160
2010	159	100	259	406	105	511	197
	<u>6140</u>	<u>3731</u>	<u>9871</u>	<u>6279</u>	<u>2986</u>	<u>9265</u>	

Ass →
/100

3465 2986 6465

* using federal price assumptions

this reduction to 50% results in
a total revenue reduction of 30%
over this period of time

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 2, 1987

The Honorable Sam Cotten
Co-Chairman
Resources Committee
P.O. Box V
Juneau, AK 99811

Re: 90-10 Revenue distribution
for federal lands

Dear Representative Cotten:

In a February 26, 1987 memorandum, you asked a number of questions regarding federal-state sharing of oil and gas revenues in the event of oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"). You asked:

1) If the Congress were to repeal the provisions of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90 percent of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90-10 federal-state revenue sharing arrangement?

2) Was PET 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90-10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

Before answering your specific questions, it may be helpful briefly to review the background of the 90-10 revenue sharing arrangement which currently exists. The distribution of oil and gas revenues from federal lands depends on whether they are "acquired lands" or "public domain lands." In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Pet. Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for acquired lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located. The rationale for this distribution formula is that the lands were on local tax roles while in private ownership, and giving some of the receipts from the lands to the local county compensates the county for the loss of those property tax revenues.

Oil and gas leasing on public domain lands is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. Under that Act, 90 percent of the revenues are dedicated to the benefit of the states */ and 10 percent are paid into the United States Treasury.

This 90-10 revenue distribution formula applies to both vacant, unappropriated and unreserved public domain

*/ For lower 48 states, 50 percent of federal oil and gas revenues from public domain lands are paid directly to the states and 40 percent is deposited into the Reclamation Fund created by the Reclamation Act of 1902. Because Alaska is not covered by the Reclamation Act and receive no benefits from the Reclamation Fund, we receive the full 90 percent of such revenues from federal public domain lands in Alaska.

lands and (with limited exceptions not applicable here) public domain lands withdrawn and reserved for specific purposes, including withdrawals and reservations for wildlife refuges. I represented Alaska in Watt v. Alaska, 451 U.S. 259 (1981), in the United States Supreme Court. The precise issue in that case was whether the 90-10 revenue distribution formula applied to the withdrawn and reserved lands of the Kenai National Moose Range. The Supreme Court, over the United States' objection, held that it did.

Like the lands in the Moose Range, the lands in ANWR were withdrawn and reserved from the public domain for refuge purposes; they are not acquired lands. There is no substantive distinction between the Moose Range lands and the lands in ANWR, and there is no substantive legal basis for concluding that federal oil and gas leasing revenues from ANWR would be distributed differently than those from the Moose Range under existing law.

The revenue distribution formula in the Mineral Leasing Act represented an historic trade-off in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the state's benefit. See generally, Fairfax and Yale, The Financial Interest of Western States in Non-Tax Revenues From the Federal Public Lands (manuscript copy published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy in 1985). This historic compromise has governed distribution of mineral revenues from federal lands, particularly in the western states, since 1920, and we can see no foreseeable circumstances under which that fundamental compromise would be changed at this time.

Accordingly, the answers to your first set of questions are: (1) The state would be entitled to 90 percent of the federal oil and gas revenues derived from ANWR lands if Congress repealed the closure of the ANWR coastal plain in ANILCA without amending the Mineral Leasing Act of 1920 or the Statehood Act; and (2) we see no foreseeable circumstances under which the ANWR coastal plain would not be subject to the Mineral Leasing Act.

As noted briefly above, there are a few limited exceptions in the Mineral Leasing Act. One of these is for

"lands within the naval petroleum and oil-shale reserves." 30 U.S.C. § 181. The revenue distribution provisions of the Mineral Leasing Act provide that all monies which may accrue to the United States "from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts' ..." 33 U.S.C. § 191.

In other words, at the time of the historic compromise when the United States decided to retain large tracts of lands and share the benefits of mineral development with the states in which those lands were located, it expressly exempted from that sharing any benefits deriving from the naval petroleum and oil-shale reserves. Former Naval Petroleum Reserve No. 4 ("PET 4"), now known as the National Petroleum Reserve in Alaska ("NPRA"), accordingly has never been subject to the Mineral Leasing Act of 1920 and the 90-10 revenue distribution formula had no application to any revenues from NPRA. In section 11 of the Alaska Statehood Act, Congress retained the exclusive legislative authority over PET 4 as long as it remained a naval reserve, so its status as far as federal-state relations has always been somewhat different than other federal lands. When Congress finally opened NPRA to competitive leasing in 1980, it did so independently of the Mineral Leasing Act. It was that separate congressional action in 1980 -- not the Mineral Leasing Act -- which resulted in the state receiving 50 percent of revenues from oil and gas leasing in NPRA. See 42 U.S.C. § 6508. Absent that congressional action, the state would have been entitled to none of the revenues from NPRA.

Summarizing, the answers to your second set of questions are: (1) PET 4 was never subject to the same 90-10 revenue sharing arrangement; instead, it was a specific (and single) exception to the 90-10 revenue sharing formula; and (2) when Congress authorized leasing in NPRA, it provided that the state was to receive 50 percent of the revenues instead of none of those revenues which is what the current law at that time would have provided in the absence of congressional action.

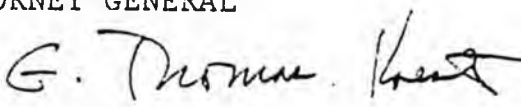
The Honorable Sam Cotten
Co-Chairman, Resources Committee

March 2, 1987
Page 5

I hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK/dlm

cc: Lieutenant Governor Stephen McAlpine
Commissioner Judy Brady, DNR
Commissioner Don W. Collinsworth, F&G
Commissioner Dennis Kelso, DEC
John Katz, Office of the Governor
Bob Grogan, Office of the Governor
Rod Swope, Office of the Governor

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to appropriate \$393,000 for the purpose of representing the state's position on the oil and gas development of the coastal plain of the Arctic National Wildlife Refuge (ANWR).

Background Information:

During its consideration of the Alaska National Interest Lands Conservation Act (ANILCA), the U.S. Congress recognized that there is a high potential of discovering oil and gas deposits on the coastal plain of the Arctic National Wildlife Refuge. Under provisions of the Alaska Statehood Act and other federal law, any revenue generated from oil and gas development in ANWR would be shared by the federal government with the State of Alaska. Based on the current estimates, as much as \$32 billion in revenues could accrue to the state from development of ANWR. Therefore, a decision by Congress on whether to open the refuge to oil and gas exploration could have important consequences both for the state's economic future and for the nation's energy needs.

Given the high oil and gas resource potential contained in the coastal plain of ANWR, Congress, under Section 1001 of ANILCA, directed the secretary of the interior to assess ANWR for potential oil and gas resources and make recommendations concerning future use and management of those resource as well as protection of the wildlife resources of ANWR.

Section 1002(h) of ANILCA requires that the secretary, in consultation with the governor, conduct a continuing inventory and study of the fish and wildlife of the coastal plain of ANWR and submit a final report, known as the 1002(h) report, to Congress.

Budget Requirements:

This is an extremely important issue to the state in terms of potential employment and revenue. Similarly, since ANWR is a wildlife refuge, protection of nationally recognized fish and wildlife resources that reside in the area is also important. In order to achieve the delicate balance between developing ANWR and protecting the fish and wildlife resources, special efforts will be required at the state and national level. Such efforts will likely require additional travel by agency staff to Washington, D.C., to consult with Washington officials, assist the governor's office with additional public relations and lobbying efforts, and some additional travel within Alaska.

Discussions are presently occurring regarding the acquisition of land in ANWR by a number of Native corporations, and possibly the state, in exchange for land owned (by the Native corporations and the state) elsewhere in Alaska. In the event these land exchanges appear to be in the state's best interest, a significant amount of money will be required by the state to conduct computer processing, modeling efforts, and field work to obtain needed area-specific information regarding the geology of the area.

Sincerely,

/s/ Steve Cowper
Steve Cowper
Governor"

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

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Sincerely,

/s/ Steve Cowper
Steve Cowper
Governor"

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1987

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Sam Cotten
Co-Chairman
Resources Committee
P.O. Box V
Juneau, AK 99811

Re: 90-10 Revenue distribution
for federal lands

Dear Representative Cotten:

In a February 26, 1987 memorandum, you asked a number of questions regarding federal-state sharing of oil and gas revenues in the event of oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"). You asked:

1) If the Congress were to repeal the provisions of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90 percent of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90-10 federal-state revenue sharing arrangement?

2) Was PET 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90-10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

Before answering your specific questions, it may be helpful briefly to review the background of the 90-10 revenue sharing arrangement which currently exists. The distribution of oil and gas revenues from federal lands depends on whether they are "acquired lands" or "public domain lands." In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Pet. Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for acquired lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located. The rationale for this distribution formula is that the lands were on local tax roles while in private ownership, and giving some of the receipts from the lands to the local county compensates the county for the loss of those property tax revenues.

Oil and gas leasing on public domain lands is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. Under that Act, 90 percent of the revenues are dedicated to the benefit of the states */ and 10 percent are paid into the United States Treasury.

This 90-10 revenue distribution formula applies to both vacant, unappropriated and unreserved public domain

*/ For lower 48 states, 50 percent of federal oil and gas revenues from public domain lands are paid directly to the states and 40 percent is deposited into the Reclamation Fund created by the Reclamation Act of 1902. Because Alaska is not covered by the Reclamation Act and receive no benefits from the Reclamation Fund, we receive the full 90 percent of such revenues from federal public domain lands in Alaska.

lands and (with limited exceptions not applicable here) public domain lands withdrawn and reserved for specific purposes, including withdrawals and reservations for wildlife refuges. I represented Alaska in Watt v. Alaska, 451 U.S. 259 (1981), in the United States Supreme Court. The precise issue in that case was whether the 90-10 revenue distribution formula applied to the withdrawn and reserved lands of the Kenai National Moose Range. The Supreme Court, over the United States' objection, held that it did.

Like the lands in the Moose Range, the lands in ANWR were withdrawn and reserved from the public domain for refuge purposes; they are not acquired lands. There is no substantive distinction between the Moose Range lands and the lands in ANWR, and there is no substantive legal basis for concluding that federal oil and gas leasing revenues from ANWR would be distributed differently than those from the Moose Range under existing law.

The revenue distribution formula in the Mineral Leasing Act represented an historic trade-off in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the state's benefit. See generally, Fairfax and Yale, The Financial Interest of Western States in Non-Tax Revenues From the Federal Public Lands (manuscript copy published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy in 1985). This historic compromise has governed distribution of mineral revenues from federal lands, particularly in the western states, since 1920, and we can see no foreseeable circumstances under which that fundamental compromise would be changed at this time.

Accordingly, the answers to your first set of questions are: (1) The state would be entitled to 90 percent of the federal oil and gas revenues derived from ANWR lands if Congress repealed the closure of the ANWR coastal plain in ANILCA without amending the Mineral Leasing Act of 1920 or the Statehood Act; and (2) we see no foreseeable circumstances under which the ANWR coastal plain would not be subject to the Mineral Leasing Act.

As noted briefly above, there are a few limited exceptions in the Mineral Leasing Act. One of these is for

"lands within the naval petroleum and oil-shale reserves." 30 U.S.C. § 181. The revenue distribution provisions of the Mineral Leasing Act provide that all monies which may accrue to the United States "from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts' ..." 33 U.S.C. § 191.

In other words, at the time of the historic compromise when the United States decided to retain large tracts of lands and share the benefits of mineral development with the states in which those lands were located, it expressly exempted from that sharing any benefits deriving from the naval petroleum and oil-shale reserves. Former Naval Petroleum Reserve No. 4 ("PET 4"), now known as the National Petroleum Reserve in Alaska ("NPRA"), accordingly has never been subject to the Mineral Leasing Act of 1920 and the 90-10 revenue distribution formula had no application to any revenues from NPRA. In section 11 of the Alaska Statehood Act, Congress retained the exclusive legislative authority over PET 4 as long as it remained a naval reserve, so its status as far as federal-state relations has always been somewhat different than other federal lands. When Congress finally opened NPRA to competitive leasing in 1980, it did so independently of the Mineral Leasing Act. It was that separate congressional action in 1980 -- not the Mineral Leasing Act -- which resulted in the state receiving 50 percent of revenues from oil and gas leasing in NPRA. See 42 U.S.C. § 6508. Absent that congressional action, the state would have been entitled to none of the revenues from NPRA.

Summarizing, the answers to your second set of questions are: (1) PET 4 was never subject to the same 90-10 revenue sharing arrangement; instead, it was a specific (and single) exception to the 90-10 revenue sharing formula; and (2) when Congress authorized leasing in NPRA, it provided that the state was to receive 50 percent of the revenues instead of none of those revenues which is what the current law at that time would have provided in the absence of congressional action.

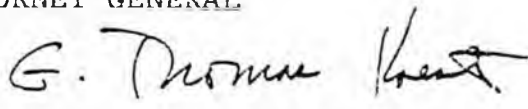
The Honorable Sam Cotten
Co-Chairman, Resources Committee

March 2, 1987
Page 5

I hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK/dlm

cc: Lieutenant Governor Stephen McAlpine
Commissioner Judy Brady, DNR
Commissioner Don W. Collinsworth, F&G
Commissioner Dennis Kelso, DEC
John Katz, Office of the Governor
Bob Grogan, Office of the Governor
Rod Swope, Office of the Governor

*Contract accounts
PE 1/12/87
rights from Indians*

BUDGET REQUIREMENTS

The following budget requests/needs were identified by the indicated agency as being necessary to effectively deal with various aspects of ANWR decision making. This budget request would be presented to the Legislature as a request by the Governor's Office for a supplemental appropriation.

Department of Law

° FY 87

One trip to Washington, D.C., to consult with Washington officials (air fare \$1,204, per diem \$558). \$ 1,762

Outside counsel with Charles Meyers of Gibson, Dunn & Crutcher, author of Williams & Meyers, Oil & Gas Law. \$ 25,000

° FY 88

Based on the ANILCA experience, an equivalent of ten trips to Washington, D.C., would likely be necessary. \$ 16,938

Department of Natural Resources

° FY 87

One trip to Washington, D.C., to consult with Washington officials (air fare \$1,204, per diem \$558). \$ 1,762

Charter flights for appraisal staff to field inspect @ 900,000 acres of state land (selected and TA's). \$ 12,500

Aerial photos, USGS maps, printing, reproductions, films, etc., for land appraisal work. \$ 1,500

° FY 88

One trip to Washington, D.C., to consult with Washington officials. \$ 1,762

Title litigation reports, insurance, reproductions, printings. \$ 2,500

Department of Fish and Game

° FY 87

One trip to Washington, D.C., to consult with Washington officials (air fare \$1,204, per diem \$558).

\$ 1,762

° FY 88

One trip to Washington, D.C., to consult with Washington officials to work on land exchanges.

\$ 1,762

Department of Environmental Conservation

° FY 87

Two full time equivalents at the Environmental Engineer III level will be needed. One would serve as the prime organizer and reviewer. The second would take the lead in preparing description of past management practices. Staff in all areas of the agency would be drawn upon as well. Both positions would be stationed in Fairbanks. (Costs for these positions, calculated on the basis of four (4) months funding for salary and benefits, March thru June 1987, using the appropriate Fairbanks salary schedule.)

\$ 38,310

*Water
air
Hazardous
waste*

Two (2) trips to ANWR.
(Costs include air fare and per diem.)
(Approximately \$3,500 per trip)

\$ 7,000

° FY 88

Two full time equivalents at the Environmental Engineer III level will be needed. One would serve as the prime organizer and reviewer. The second would take the lead in preparing description of past management practices. Staff in all areas of the agency would be drawn upon as well. Both positions would be stationed in Fairbanks. (Costs for these positions, calculated on the basis of eight (8) months funding for salary and benefits, July 1987 thru February 1988, using the appropriate Fairbanks salary schedule.)

\$ 76,620

Five (5) trips to ANWR.
(Costs include air fare and per diem.)
(Approximately \$3,500 per trip)

\$ 18,070

One trip to Washington, D.C., for technical consultations with Washington officials.

\$ 1,762

Governor's Office, Washington, D.C.

° FY 87

One full time position to lobby, assist in liaison with Washington, D.C. interest groups, attend hearings and meetings, help coordinate various elements of an advocacy program, and maintain contact with agency personnel and others in Alaska. (Costs for this position calculated on the basis of four (4) months funding for salary and benefits, March thru June 1987, using the appropriate Juneau salary schedule.)

\$ 16,765

Lobbying firm contract. (Costs for this contract, calculated based upon an estimated \$9,000 per month for four (4) months. March thru June 1987.)

\$ 36,000

Public relations/media firm contract. (Costs for this contract, calculated based upon an estimated \$9,000 per month for four (4) months, March thru June 1987.)

\$ 36,000

° FY 88

One full time position to lobby, assist in liaison with Washington, D.C. interest groups, attend hearings and meetings, help coordinate various elements of an advocacy program, and maintain contact with agency personnel and others in Alaska. (Costs for this position calculated on the basis of twelve (12) months funding for salary and benefits, July 1987 thru June 1988, using the appropriate Juneau salary schedule.)

\$ 50,295

Lobbying firm contract. (Costs for this contract, calculated based upon an estimated \$9,000 per month for twelve (12) months. July 1987 thru June 1988.)

\$108,000

Public relations/media firm contract. (Costs for this contract, calculated based upon an estimated \$9,000 per month for twelve (12) months, July 1987 thru June 1988.)

\$108,000

FUNDING REQUEST FY 87

Supplemental

Governor's Office	\$ 88,765
Law	26,762
DNR	15,762
DFG	1,762
DEC	45,310

FY 87 TOTAL

\$178,361

FUNDING REQUEST FY 88

Operating Budget
Increment

Governor's Office	\$266,295
Law	16,938
DNR	4,262
DFG	1,762
DEC	96,452

FY 88 TOTAL

\$385,709

FY87 - position 776

S B

1 0 8

STATE OF ALASKA



SENATE

Letter of Intent

CSSE 108 (RES)

The Judiciary committee, in considering SB-108, was made aware by a principal proponent of the bill (Yukon-Pacific Corporation) that in the corporation's project description and its scopeing document, it has signified its intention to encourage local hire at all "TAGS" facilities; to provide training for operation and maintenance personnel; to comply with State and Federal standards which are applicable or which will become applicable for the Alaska labor market and to use qualified Alaska labor in construction.

The committee welcomes these assurances. It is intended that in the administration of this chapter, the commissioner will encourage the utilization of qualified Alaska workers to the maximum possible extent.

Adopted May 9, 1987.

February 16, 1987

The Honorable Lloyd Jones
Chairman
Senate Transportation Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99801

Dear Senator Jones:

Subject: Senate Bill 108, relating to decisions on right-of-way lease applications.

Position: The Department of Natural Resource supports the amendment to the oil and gas pipeline right-of-way leasing statute (AS 38.35.100(b)) described in this bill.

Background: Senate Bill 108 would allow the commissioner to issue a conditional pipeline right-of-way lease even if the applicant is not presently "fit, willing and able."

The existing "fit, willing and able" standard requires the applicant to be nearly ready to begin construction before a right-of-way lease can be issued. In other words, financing has to be reasonably assured, gas sale contracts and markets in place, and construction designs substantially completed.

The commissioner currently has only one alternative to finding an applicant "fit, willing and able," and that is to deny the application. This bill would provide the commissioner with an additional alternative; the ability to issue a conditional right-of-way lease, subject to conditions that ensure the applicant will become "fit, willing and able."

This bill would have a positive effect on the economic development of pipeline projects in Alaska and would not reduce the "fit, willing and able" standards an applicant would be required to meet prior to actual construction of a pipeline.

The Honorable Lloyd Jones

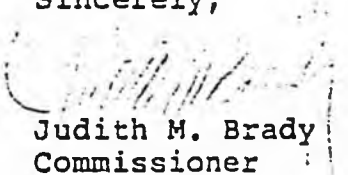
-2-

February 16, 1987

Recommendation: To ensure that the applicant is required to become "fit, willing and able" within a reasonable period of time, add the words "within a prescribed amount of time" to line 15, after the word able.

Please let me know if you would like additional information.

Sincerely,


Judith M. Brady
Commissioner

cc: Committee members .
Governor's Legislative Liaison

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB 108

Publish Date: _____

Revision Date: February 16, 1987

Agency Affected: Natural Resources

Title: Right-of-Way Lease Decisions

BRU: Land and Water Management

Sponsor: Senator Cochill

Components: _____

Requestor: State Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol J. Wilson
Division: Commissioner's Office

Phone: 465-2400
Date: 2/16/87

Approved by Commissioner: *Walter R. Bredt*
Agency: Natural Resources

Date: 2/16/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SB108
STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

March 26, 1987

The Honorable Jay Kerttula
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kerttula:

The purpose of this letter is to provide an explanation of how the proposed change in the right-of-way leasing statute (SB 108) will affect the processing of oil and gas pipeline applications.

Under the existing statute, before an application is accepted by the department, it must be complete. That is, it must contain any and all data, information, plans, and exhibits deemed necessary by the commissioner to accomplish the pre-public hearing analysis, and the final decision to issue or deny, which follows the public hearing. A major element of the final decision is the commissioner's determination that the applicant is "fit, willing, and able" to perform in a manner consistent with the public interest.

The "fit, willing, and able" determination is an in-depth analysis of the applicant's financial and technical capability to perform as expected. Some considerations addressed under the "fit, willing, and able" standard include:

1. The status of financing arrangements;
2. Whether there will be oil or gas sales contracts dedicated in sufficient quantities to support the project; and
3. Whether the extent of preparation shows that this applicant can build the project as planned.

If the commissioner decides favorably for the applicant with regards to the "fit, willing, and able" determination, a right-of-way lease can then be offered. However, a negative determination results in an outright denial.

The proposed statutory amendment (SB 108) would provide an additional option by allowing the commissioner to issue a conditional right-of-way lease. What follows is the state's understanding of how the adjudication process will work with the passage of SB 108.

Project review, adjudication, and monitoring will take place in five stages. Those stages are:

1. Pre-application, application, and conditional right-of-way issuance.
2. Preconstruction (including field programs).
3. Construction (including rehabilitation).
4. Maintenance and operations monitoring.
5. Abandonment.

Stage 1 is characterized by the identification of issues, scoping, and development of work programs. A great deal of time is devoted to coordination with federal, state, and local government agencies to develop a consistent approach to the development of lease language, the administration of lands within the corridor, and a joint monitoring and surveillance program. Examples of Stage 1 tasks are presented below:

1. Identification of key technical personnel needed to resolve resource related issues. Included is the development of agency budget needs for Stages 2 and 3 of the project.
2. Development of a State Administrative Order to establish the roles of the participating state agencies, and their relationship to each other, and to establish appropriate authority.
3. Expedited resolution of general route issues.
4. Extensive coordination with the appropriate federal agencies to develop the following:
 - (a) Consistent language (terms and conditions) between the state right-of-way lease and the federal right-of-way grant.
 - (b) A joint agreement on the administration of lands along the pipeline corridor; and

- (c) A joint monitoring and surveillance agreement to cover the entire life of the pipeline project.
5. Expedited review and comment on the draft and final environmental impact statements, the Corps of Engineers Section 10/404 permits, and coastal zone consistency determinations on various aspects of the project.
 6. Development of list of issues and concerns that must be resolved prior to issuance of the Authorization to Construct. Included are the procedures necessary to implement the program. This work essentially sets the work plan for Stage 2.
 7. Identification of special technical studies that must be completed prior to final design approval. Such studies include, but are not limited to, stream crossings, cold or hot pipe effects on surface or subsurface waters, air and water quality monitoring, and pipeline integrity.
 8. Review the permitting strategy provided by the applicant. This information is incorporated in the lease terms and conditions and used as milestones to be accomplished prior to issuance of Authorization to Proceed.
 9. Establish a conceptual agreement with the applicant about facilities use, maintenance, and repair. This agreement forms the basis for reimbursement to the state for repair or reconstruction of roads, airports, or other state facilities.
 10. Establish procedures for preventing conflicts between existing and proposed facilities, including but not limited to, ANGTS, TAPS, and state highways.

To protect the various state interests, the lease would be conditioned in such a way that the commissioner's "fit, willing, and able" determination would be made during Stage 2. In any case, the determination will be made prior to the issuance of the Authorization to Construct. A process and schedule will be established through the terms and conditions to establish explicit deadlines for resolving issues and making the necessary determination. The overall intent is to ensure that issues are resolved well in advance of actual construction.

Stage 2 involves a high level of involvement of agency personnel. Depending on the size and scope of the project it is appropriate to consider establishing a State Pipeline

March 26, 1987

Office. This office would be staffed by personnel from participating state agencies having the responsibility to collect data (fish and wildlife, habitat, air and water quality, geotechnical, hydrological, etc.) necessary for final design approval, and will authorize the beginning of construction. Baseline studies will be conducted, and review of design concepts, criteria, and specifications will be conducted.

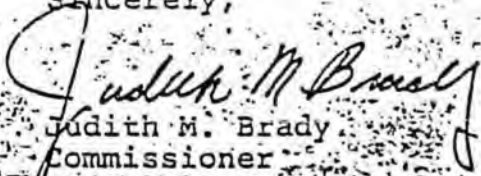
Stage 2 will culminate with the commissioner's "fit, willing, and able" determination, and the issuance of the Authorization to Construct.

Stages 3, 4, and 5 will proceed normally, unaffected by the statutory change represented in SB 108.

Under AS 38.35.140(b) the lessee is obligated to "reimburse the state for all reasonable costs incurred in processing an application filed under AS 38.35.050 and in monitoring the construction of the pipeline on the right-of-way." Accordingly, state agencies such as the Alaska Departments of Law, Natural Resources, Fish and Game, Environmental Conservation, and Transportation and Public Facilities expect to enter into a reimbursement agreement with any applicant. A reimbursable services agreement shall include, but not be limited to, pre and post application stages, pre-construction and construction, and maintenance and operation monitoring. Pre and post application activities include inter-agency negotiations and review of relevant documents. Agencies may require the lessee to provide direct services, such as transportation and lodging, in lieu of reimbursement.

The Department of Natural Resources supports SB 108. Passage of the bill into law will likely result in an increase in application for pipeline rights-of-way and a corresponding work load. I believe it is in the state's interest to do so as it introduces a higher level of consistency to the department's adjudication process, encourages the participation of smaller companies while not discouraging participation of larger ones, and provides protection against speculation by incorporating terms and conditions requiring performance standards, which if not met, could void the lease.

Sincerely,


Judith M. Brady
Commissioner

cc: Rod Swope, Governor's Office
George Sullivan, Governor's Office

AMENDMENT

from
NW Pipeline

TO: CS for SENATE BILL NO. 108 (Resources)

Page 2, lines 16 and 17, after "section":

Delete: (favorably to the applicant)

Page 2, line 16, after "section":

Insert: that the applicant can be reasonably expected in
the future to be fit, willing, and able to perform
under the application,

AMENDMENT ONE

To establish requirements for written findings related to conditional uses:

1. p. 1, line 12, after "determine," insert:

in a written finding

2. p. 3, line 20, after "interest", insert:

and issuing findings to substantiate a decision to
allow the transfer

AMENDMENT TWO

To clarify some distinctions between conditional and regular leases:

1. p. 2, line 19, after "application", insert:

under a conditional lease

2. p. 3, line 1, after "lease", insert:

or a conditional lease

3. p. 4, line 16, after "If", insert:

during the term of a conditional lease

AMENDMENT THREE

To clarify that the conditional lease is revocable and carries no preference or priority rights

1. p. 4, line 25, after "right-of-way.", insert:

A conditional lease may be revoked at any time that the commissioner determines that the applicant will not be fit, willing, and able to perform during the term of the lease or when an unconditional lease is issued for all or part of the right-of-way.

2. p. 4, line 26, delete "priority" and insert after "rights":

, including preference or priority rights.

AMENDMENT ONE

To establish requirements for written findings related to conditional uses:

1. p. 1, line 12, after "determine," insert:

in a written finding

2. p. 3, line 20, after "interest", insert:

(ard issuing ^{written} findings to substantiate a decision to
allow the transfer)

AMENDMENT TWO

To clarify some distinctions between conditional and regular leases:

1. p. 2, line 19, after "application", insert:
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2. p. 3, line 1, after "lease", insert:
or a conditional lease

3. p. 4, line 16, after "If", insert:
during the term of a conditional lease

AMENDMENT THREE

To clarify that the conditional lease is revocable and carries no preference or priority rights

1. p. 4, line 25, after "right-of-way.", insert:

A conditional lease may be revoked at any time that the commissioner determines that the applicant ^{or conditional lessee} will not be fit, willing, and able to perform during the term of the lease (or) when [an unconditional lease] is issued for all or part of the right-of-way.

2. p. 4, line 26, delete "priority" and insert after "rights":

, including preference or priority rights.

1
OC ✓)
| 10

when another applicant
or conditional lessee
is determined to be F.W.
to prefer under an
applicant or lease,

Original sponsor: Coghill

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 108 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to decisions of the commissioner of
7 natural resources regarding the eligibility of an
8 applicant for a pipeline right-of-way permit."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 38.35.100 is amended to read:

11 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner
12 shall promptly determine, [↑] on an application filed under AS 38.35.050,
13 whether the applicant is fit, willing, and able to perform the trans-
14 portation or other acts proposed in a manner that will be required by
15 the present or future public interest. In making a determination the
16 commissioner shall consider whether or not

17 (1) the proposed use of the right-of-way will unreasonably
18 conflict with existing uses of the land involving a superior public
19 interest;

20 (2) the applicant has the technical and financial capabil-
21 ity to protect state and private property interests;

22 (3) the applicant has the technical and financial capabil-
23 ity to take action to the extent reasonably practical to

24 (A) prevent any significant adverse environmental
25 impact, including but not limited to, erosion of the surface of
26 the land and damage to fish and wildlife and their habitat;

27 (B) undertake any necessary restoration or revegeta-
28 tion; and

29 (C) protect the interests of individuals living in the

not necessary

1 general area of the right-of-way who rely on fish, wildlife, and
2 biotic resources of the area for subsistence purposes;

3 (4) the applicant has the financial capability to pay
4 reasonably foreseeable damages for which the applicant may become
5 liable on claims arising from the construction, operation, mainte-
6 nance, or termination of the pipeline;

7 (5) the applicant has agreed that in the construction and
8 operation of a pipeline within the right-of-way the applicant will
9 comply with and require contractors and their subcontractors to comply
10 with applicable and valid laws and regulations regarding the hiring of
11 residents of the state then in effect or that take effect subsequent-
12 ly.

13 (b) If the commissioner makes the [THESE] determinations under
14 (a) of this section favorably to the applicant, then the commissioner
15 may grant the whole or part of the application. If the commissioner
16 makes the determinations under (a)(1) - (5) of this section [favorably] →
17 to the applicant] but determines that the applicant is not (then) fit,
18 willing, and able to perform under the application, the commissioner
19 may grant the application subject to conditions established by the
20 commissioner that will ensure that the applicant will, within a pre-
21 scribed period of time not exceeding 10 years, establish that the
22 applicant is fit, willing, and able, under (a) of this section, to
23 perform the transportation or other acts that will be required by the
24 present or future public interest. An applicant is not entitled to a
25 notice or authorization to proceed to construction, or its equivalent,
26 under a conditional lease until the commissioner determines in writing
27 that the applicant has satisfactorily established that the applicant
28 is then fit, willing, and able to perform under (a) of this section.
29 Otherwise, the commissioner shall deny the application.

1 (c) The commissioner may offer the applicant a lease under this
2 section. If the applicant does not accept a lease offered under this
3 section within 30 days, the lease offered is withdrawn [IN ORDER TO
4 GRANT THE WHOLE OR PART OF THE APPLICATION THE COMMISSIONER SHALL

5 OFFER A LEASE TO THE APPLICANT FOR ITS ACCEPTANCE THROUGH SIGNING OF

6 THE LEASE AND AGREEING TO COMPLY WITH ITS TERMS, CONDITIONS, AND

7 OBLIGATIONS. ONLY UPON PROPER ACCEPTANCE OF OFFERED LEASE BY THE

8 APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT

9 OF THE APPLICATION CONSUMMATED].

10 * Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

11 (d) The commissioner shall include in a conditional lease each
12 requirement and condition of the covenants established under AS 38.-
13 35.120. The commissioner may also require that the lessee agree to
14 additional conditions that the commissioner finds to be in the public
15 interest. In place of the covenant established under AS 38.35.-
16 120(a)(9), the commissioner shall require the ^{and} lessee to agree that it
17 will not transfer, assign, ~~pledge~~, or dispose of in any manner, di-
18 rectly or indirectly, its interest in a conditional right-of-way lease
19 or a pipeline subject to the conditional lease, unless the commis-
20 sioner, after considering the public interest, ^{issues findings} authorizes the trans-
21 fer. The commissioner shall also require the lessee to agree not to
22 allow the transfer of control of the lessee without the approval of
23 the commissioner; as used in this subsection, "transfer of control of
24 the lessee" means the transfer of 30 percent or more, in the aggre-
25 gate, of ownership interest in the lessee in one or more transactions
26 to one or more persons by one or more persons.

27 (e) The commissioner shall require a conditional lessee to agree
28 that

29 (1) in the absence of the approval of the commissioner, a

1 transfer may not relieve the lessee of an obligation assumed under the
2 lease;

3 (2) a transfer, including the transfer of lessee, that
4 occurs without the approval of the commissioner is ineffective to
5 transfer interests in and obligations under the lease; and

6 (3) a transfer constitutes a default under the lease.

7 (f) In an application for the approval under (d) of this section
8 of a transfer of an interest, the commissioner shall consider whether
9 the proposed transferee will be fit, willing, and able to perform the
10 transportation or other acts proposed under the conditions established
11 in the conditional lease and whether the transfer is in the public
12 interest. In approving the transfer of an interest under (d) of this
13 section and this subsection, the commissioner may impose any condition
14 on the transfer that the commissioner considers in the public inter-
15 est.

16 (g) If ^{denying them} the commissioner determines under (a) of this section
17 that the applicant is fit, willing, and able to perform the transpor-
18 tation or other acts proposed in a manner that will be required by the
19 present or future public interest, the commissioner may amend the
20 conditional right-of-way lease to insert the covenant established in
21 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-
22 lished under (d) and (e) of this section.

23 (h) The issuance of a conditional lease does not prevent the
24 commissioner from issuing other conditional or unconditional leases
25 for the same right-of-way. An applicant or conditional lessee accrues
26 no priority rights to a particular right-of-way until the commissioner
27 makes a determination that the applicant or conditional lessee is then
28 fit, willing, and able to perform the transportation or other acts
29 proposed under (a) of this section.

incl pref or priority

1 (i) The commissioner shall insert a provision implementing the
2 requirements of (a)(5) of this section into each agreement entered
3 into by the commissioner for the construction and operation of a
4 pipeline within the state.

or a conditional lease

1 (c) The commissioner may offer the applicant a lease under this
2 section. If the applicant does not accept a lease offered under this
3 section within 30 days, the lease offered is withdrawn [IN ORDER TO
4 GRANT THE WHOLE OR PART OF THE APPLICATION THE COMMISSIONER SHALL
5 OFFER A LEASE TO THE APPLICANT FOR ITS ACCEPTANCE THROUGH SIGNING OF
6 THE LEASE AND AGREEING TO COMPLY WITH ITS TERMS, CONDITIONS, AND
7 OBLIGATIONS. ONLY UPON PROPER ACCEPTANCE OF OFFERED LEASE BY THE
8 APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT
9 OF THE APPLICATION CONSUMMATED].

10 * Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

11 (d) The commissioner shall include in a conditional lease each
12 requirement and condition of the covenants established under AS 38.-
13 35.120. The commissioner may also require that the lessee agree to
14 additional conditions that the commissioner finds to be in the public
15 interest. In place of the covenant established under AS 38.35.-
16 120(a)(9), the commissioner shall require ^{conditional} the lessee to agree that it
17 will not transfer, assign, pledge, or dispose of in any manner, di-
18 rectly or indirectly, its interest in a conditional right-of-way lease
19 or a pipeline subject to the conditional lease, unless the commis-
20 sioner, after considering the public interest, ^{and issuing findings to substantiate a} authorizes the trans-
21 fer. The commissioner shall also require ^(conditional) the lessee to agree not to
22 allow the transfer of control of the lessee without the approval of
23 the commissioner; as used in this subsection, "transfer of control of
24 the lessee" means the transfer of 30 percent or more, in the aggre-
25 gate, of ownership interest in the lessee in one or more transactions
26 to one or more persons by one or more persons.

27 (e) The commissioner shall require a conditional lessee to agree
28 that

29 (1) in the absence of the approval of the commissioner, a

*amended
app i
transfer
pipeline?*

*decision to
allow the
transfer.*

Sam - The amendment of (h) as below would clarify that the conditional lease is revocable and that it gives no preference or priority.

1 transfer may not relieve the lessee of an obligation assumed under the
2 lease;

3 (2) a transfer, including the transfer of lessee, that
4 occurs without the approval of the commissioner is ineffective to
5 transfer interests in and obligations under the lease; and

6 (3) a transfer constitutes a default under the lease.

7 (f) In an application for the approval under (d) of this section
8 of a transfer of an interest, the commissioner shall consider whether
9 the proposed transferee will be fit, willing, and able to perform the
10 transportation or other acts proposed under the conditions established
11 in the conditional lease and whether the transfer is in the public
12 interest. In approving the transfer of an interest under (d) of this
13 section and this subsection, the commissioner may impose any condition
14 on the transfer that the commissioner considers in the public inter-
15 est.

insert the term of conditional lease

16 (g) If the commissioner determines under (a) of this section
17 that the applicant is fit, willing, and able to perform the transpor-
18 tation or other acts proposed in a manner that will be required by the
19 present or future public interest, the commissioner may amend the
20 conditional right-of-way lease to insert the covenant established in
21 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-
22 lished under (d) and (e) of this section ^{and issue a lease for the right-of-way in accordance w/ AS 38.35.1}

23 (h) The issuance of a conditional lease does not prevent the
24 commissioner from issuing other conditional or unconditional leases ^{may be revocable}
25 for the same right-of-way. ~~A conditional lease is revocable at any time that the commissioner determines that the applicant or conditional lessee accrues~~
26 no ~~priority~~ ^{including preference or priority} rights to a particular right-of-way until the commissioner
27 makes a determination that the applicant or conditional lessee is ^{then}
28 fit, willing, and able to perform the transportation or other acts
29 proposed under (a) of this section.

then ^{the commissioner determines that the applicant is fit, willing and able during the term of the lease or when another lease is issued for all or part of the right-of-way.}

